STATE OF MICHIGAN
IN THE SUPREME COURT

CHARTER TOWNSHIP OF NORTHVILLE

Plaintiff,

-and-

HEATHER SCHULZ and JEFFREY SCHULZ; MARY LOWE and GEORGE LOWE; ERIC HANPETER and LAURA HANPETER; FRANK CORONA and MARCELLA CORONA; DAVID MALMIN and LEE ANN MALMIN; JOHN MILLER and DEBRA MILLER; TOM CONWELL and EVY CONWELL; MARY BETH YAKIMA and DAN YAKIMA; RICHARD LEE and PATTY LEE; BETH PETERSON and RICK PETERSON; JOHN BUCHANAN; KEN BUCHANAN; LARRY GREGORY and NANCY GREGORY; K. MAUREEN WYNALEK and JAMES WYNALEK; HAROLD W. BULGER and SANDRA BULGER,

Intervening Plaintiffs – Appellants,

v

NORTHVILLE PUBLIC SCHOOLS, a Michigan municipal corporation; LEONARD R. REZMIERSKI, Superintendent; and the BOARD OF EDUCATION OF NORTHVILLE PUBLIC SCHOOLS,

Defendants - Appellees.

SUPREME COURT NO. 120213

Court of Appeals Docket No. 219124
Circuit Court Case No. 98-816747 CZ

MICHIGAN ASSOCIATION OF SCHOOL BOARDS BRIEF AMICUS CURIAE IN SUPPORT OF DEFENDANTS-APPELLEES

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Michigan Association of School Boards is a voluntary, nonprofit association of local and intermediate boards of education throughout the State of Michigan, whose membership consists of the boards of education of over 600 local school boards and intermediate school boards in this state. As existing school buildings continue to age while attempting to accommodate advances in technology and increased student populations, each of these districts have a significant interest in the regulation of the remodeling and construction of school buildings in this State.

At the request of Defendants-Appellees Northville Public Schools, the Board of Education of Northville Public Schools, and its Superintendent, Leonard R. Rezmierski, MASB is submitting this Brief as Amicus Curiae in this matter. The central question of law framed in this case arises from time to time and, as will be contended, has been consistently, and emphatically, resolved in favor of institutions of education, both in the courts and, very clearly, by the Michigan Legislature. This present case provides an opportunity to reaffirm the primary importance of education in the State of Michigan and to the government of this State, while its provision is implemented locally in facilities located in Michigan's diverse array of local governmental communities.

In its *amicus curiae* capacity, the Michigan Association of School Boards submits this brief in support of Defendants-Appellees argument that section 1263(3) of the Revised School Code precludes local zoning authorities form exercising jurisdiction over the remodeling and construction of school buildings in this State and that section 1263(3) constitutes a valid delegation of authority to the Superintendent of Public Instruction.

STATEMENT OF JURISDICTION

Amicus Curiae, Michigan Association of School Boards, concurs in the Statement of Jurisdiction in the Brief of Defendants-Appellees in this matter.

COUNTERSTATEMENT OF QUESTIONS INVOLVED

I. WHETHER THE GREAT WEIGHT OF AUTHORITY SUPPORTS THE PRINCIPLE THAT SCHOOLS ARE NOT SUBJECT TO LOCAL ZONING RESTRICTIONS?

Trial Court's answer:	"Yes"
Court of Appeals answer:	"Yes"
Plaintiffs-Appellants' answer:	"No"
Defendants-Appellees' answer:	"Yes"
Amicus Curiae, Michigan Association of School Boards, answers	"Yes"

II. WHETHER THE REVISED SCHOOL CODE PROVIDES AN APPROPRIATE DELEGATION OF AUTHORITY TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR THE EXERCISE OF HIS SOLE AND EXCLUSIVE JURISDICTION OVER THE PLANS, SPECIFICATIONS, AND SITEPLANS OF SCHOOL BUILDING CONSTRUCTION?

Trial Court's answer:	"Yes"
Court of Appeals answer:	"Yes"
Plaintiffs-Appellants' answer:	"No"
Defendants-Appellees' answer:	"Yes"
Amicus Curiae, Michigan Association of School Boards, answers	"Yes"

COUNTERSTATEMENT OF FACTS

Amicus Curiae, the Michigan Association of School Boards, concurs in and relies upon the Counterstatement of Facts in the Defendants-Appellees' brief in this Appeal.

LAW AND ARGUMENT

I. THE GREAT WEIGHT OF AUTHORITY SUPPORTS THE PRINCIPLE THAT SCHOOLS ARE NOT SUBJECT TO LOCAL ZONING RESTRICTIONS, BASED ON THE APPLICATION OF THREE TESTS.

Leading commentators in municipal law and zoning, and school law, indicate that the great weight of authority supports the general principle that local municipalities cannot impose zoning restrictions on schools in their areas. The reasons for this are well stated in *Anderson's American Law of Zoning*, Young (4th Ed) at § 12.09:

> **Educational uses, generally.**
> If the functions of government were rated according to their contributions to the public welfare, those dealing with education would be placed high on the rating sheets of most persons. Most communities are preoccupied with education; their concern begins with the instruction of children of preschool age, and it continues through the advanced training of young adults to provisions for adult education. ... Uses of land for educational purposes are highly favored; they enjoy some immunity to municipal zoning regulation.

Attention is also invited to the same conclusion stated even more emphatically in *Education Law*, Rapp, at § 4.01[4][b][i]:

> Public educational uses are usually immune from local zoning regulations. Thus, a municipality generally may not exclude public educational uses and must allow without restriction the location of elementary, secondary, postsecondary, and vocational educational facilities, as well as accessory uses such as bus garages, shops and refueling facilities, and others, in reaching this conclusion, courts have applied several tests, including a superior sovereign test, a governmental-proprietary use test, and a balancing test.

See also Annotation, *Zoning Regulations As Applied To Public Elementary And High Schools*, 74 ALR3d 136 (1976), and cases collected therein.

A reading of appropriate statutory authority and cases show that Michigan strongly favors this principle of immunity, and that its position on this issue is based upon and meets all three of the tests as indicated above.

A. EDUCATION IS A PRIMARY AND DISTINCTIVE FUNCTION OF STATE GOVERNMENT WHICH UTILIZES SCHOOL DISTRICTS AS ITS LOCAL AGENCIES, INDEPENDENT OF LOCAL GOVERNMENTS, TO MEET ITS RESPONSIBILITIES.

The "superior sovereign" test is stated as follows: "the authority of a governmental body to impose zoning regulations on another depends on which one is the superior sovereign." And more specifically, "Where immunity from a local zoning ordinance is claimed by an agency occupying a superior position in the governmental hierarchy, it is presumed that immunity was intended in the absence of express statutory language to the contrary." *Education Law, supra.* There can be no question that this inquiry has long been used by the courts in Michigan, and that they have consistently reaffirmed the immunity claimed by Northville Public Schools in this case.

Attention is invited to the extended discussion of the relationship and independence of local schools from municipal control in *Attorney General v. Thompson,* 168 Mich 511, 134 NW 722 (1912). In that case the Supreme Court was concerned with whether the statutory limits on municipal indebtedness pertaining to the City of Detroit included and, therefore limited, bonds for schools and education purposes. The Court began its inquiry by stressing that the critical importance of education in Michigan was legislated even before its statehood:

> Early in the history of this country the foundation of our free school system was laid in the ordinance of 1787, providing fundamental laws for the region northwest of the Ohio river and setting it apart for future

> division into States. Special emphasis was given to the subject of general education in the familiar declaration that religion, morality, and knowledge, being essential to good government and the happiness of mankind, "schools and the means of education shall forever be encouraged." This language has been preserved and perpetuated in the Constitutions and statutes of our State, and our free school system has been organized, fostered, and supported by constitutional provisions and legislative enactment, as a primary and distinctive function of State government held under State control. Its administration, however, has been committed in its details to local agencies of limited territory, designated district boards or boards of education, cooperating with, and more or less closely allied to, municipal corporations for local government which exist in the form of cities, villages, and townships covering the same territory; but the matter of universal and compulsory education, and the support of free schools to that end, has been held apart from the organization and maintenance of cities and villages for strictly local government and municipal conveniences. *Id* at 519. (emphasis added).

The Court then reviewed and relied on earlier cases discussing the relationship of schools to the local municipal entities, such as *Hatheway v Sackett* 32 Mich 97 (1881), in which the Michigan Supreme Court stressed that "strict regulations are necessary to prevent our city and village organizations from drawing to themselves the supervision of the common schools within their borders." Quoted with approval in *Attorney General, supra*, 168 Mich at 519. And as to townships as well, as noted by the Court in quoting with approval from *Belles v Burr*, 76 Mich 1, 43 NW 24 (1889), in which it was stated that "[t]he board of city school authorities is a body having a larger control than township boards. It has all their powers, and more, and it is by the Constitution made the correlative body to the township board." *Attorney General, supra*, 168 Mich at 520. The Court also stressed that the Michigan Constitution of 1909, like that of 1850, treated education and local government as distinct subjects and in separate articles. It also stated that, in statutes providing for education, enacted to carry out that respective Article in the Constitution, "[e]laborate provision is made for the control and management of the school

system, accumulation of property and erection of buildings necessary for school purposes... ." *Id.* at 523. The Court concluded that the debt incurred by school bonds were independent of the debt limit on the municipality.

The same high phrasing regarding the importance of education as found in the Northwest Ordinance has been carried through every version of the Michigan Constitution, including the present one, in Section 1 of "Article VIII Education" of the Constitution of 1963. And, as before, Local Government is treated in a wholly separate portion: Article VII. Through the years, however, the same conclusion has been reached: as education is a function of the state, it is immune from most non-state controls, including zoning regulations of local government. Thus, in 1956 the Attorney General of Michigan was asked the following question: "Does a Township have authority to require a School District to obtain a Township Building Permit for the construction of a school within its territorial jurisdiction?" OAG, 1956, No 2792 p 687 (Nov 21, 1956).

His response was an emphatic "NO." Then Attorney General (and later Justice) Thomas M. Kavanagh reasoned that:

> The statutes indicate, and the court has consistently held, that education in Michigan is a matter of state concern, and that school districts are merely state agencies carrying out the distinctly governmental function of education. The legislature, by virtue of constitutional provision, has been given control of schools and the policy of the state has been to retain such control through local state agencies independent of but closely associated with the local governments. Thus it is apparent that control of school matters is not a matter of local concern, and that local governments have no authority to exercise regulation of schools under their police power. *Id.*

The Attorney General also noted that the Legislature had enacted a separate statutory system relating to school construction and then, as now, state approval of building plans is required. *Id.*

Federal cases interpreting and applying Michigan laws and its Constitution have come to the same conclusion as to education and schools being a primary function of the state government. For example, in *Bradley v Milliken*, 338 F. Supp. 582 (W. Mich 1971), decided under the present Michigan Constitution of 1963, the Court stated that the responsibility for providing educational opportunity to all children on constitutional terms is ultimately that of the state, and that while "a state's form of government may delegate the power of daily administration of public schools to officials with less than state-wide jurisdiction does not dispel the obligation of those who have broader control to use the authority thy have consistently with the constitution." *Id* at 593.

Thus, schools and education are unique in their status as instruments and the responsibility of the "higher sovereign," the state government of Michigan, and cases involving other state-related facilities and their potential immunity from local zoning bear only tangentially on the issue as to schools. Some have been held exempt like schools. Such as facilities of the Department of Corrections in *Dearden v City of Detroit*, 403 Mich 257, 269 NW2d 139 (1978), or more recently, that bicycle and walking trails developed from railroad right of ways in Michigan were not subject to township zoning. *Twp of Bingham v. RLTD Railroad Corp,* No. 196418 (Mich App, decided Feb 20, 1998,) 576 NW2d 731. And finally, the status of Michigan universities which are not subject to the State Construction Code because of their comparably unique status in the State Constitution and statutes. *County of Marquette v Bd of Control of Northern Michigan University,* 111 Mich App 521, 314 NW2d 678 (1982). Others do not have that immunity because they do not have that same "higher sovereign" status, such as DNR boat launch facilities. *Twp of Burt v Dep't of Natural Resources,*459 Mich 659; 593

NW2d 534 (1999). But the uniqueness of schools, stressed since the Northwest Ordinance, warrant the conclusion that they are not to be regulated by local zoning ordinances in the planning and construction of buildings, but by the state sovereign itself.

B. SINCE NORTHVILLE PUBLIC SCHOOLS IS PERFORMING A GOVERNMENTAL AND NOT A PROPRIETARY FUNCTION IN PLANNING AND BUILDING ITS NEW HIGH SCHOOL, IT IS IMMUNE FROM LOCAL ZONING.

The second test to determine whether the particular use of the land is immune from local zoning regulations is whether it is "governmental" or "proprietary" in nature and if "the political unit is found to be performing a governmental function, it is immune from the conflicting zoning ordinance." *Education Law, supra.* The treatise goes on:

> The selection, location and procurement of school sites and other related facilities is generally considered a governmental rather than aproprietary function which is not subject to zoning restrictions. The right of a public educational institution to condemn real estate is a common basis for finding that it is engaged in a governmental function. *Id.* (Emphasis added)

This second test is also met in this case. Attention is invited to Article 2, Part 27 of the Revised School Code of Michigan, being MCL 380.1621(a), MSA 15.41621:

> A school district or intermediate school district has the power of eminent domain for acquiring title in fee or interest in sites for new schools, agricultural sites, athletic fields, parks, playgrounds or other athletic facilities, or for the improvement or expansion of existing school facilities, and shall exercise that power according to the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws. MCL 380.1621(a), MSA 15.41621.

This statute makes it clear that Northville Public Schools possesses the power of eminent domain for this project, and specifically for what is under contention in this case:

the site of the new high school, the building itself which will be located on the site, and the athletic field, and other athletic facilities necessary for that field, such as lighting. This project is, without doubt, a governmental function, immune from Northville Charter Township's attempts to govern it.

C. PROVISIONS OF THE MICHIGAN REVISED SCHOOL CODE, THE SCHOOL BUILDINGS CONSTRUCTION ACT, AND ONGOING BUT UNSUCCESSFUL ATTEMPTS TO REPEAL OR AMEND THEM PROVES THE LEGISLATURE'S INTENT TO LEAVE SCHOOLS IMMUNE FROM REGULATION BY LOCAL MUNICIPALITIES.

The third test described in *Education Law* is very straightforward: "A final test rejects any precise formula or set of criteria and, instead, determines the legislative intent." *Education Law, supra.* One of the conclusions it comes to in this section is that, "Although public educational uses are usually immune from zoning regulations, state statute may specifically make them subject to those regulations, at least by certain classes of municipalities." *Id.*

This general rule of immunity is clearly the law of Michigan, and there is no such specific exception which might be found in other states. To the contrary: the Michigan Revised School Code, at MCL Section 380.1263, could not make it clearer. By the very explicit words of this statute, the Legislature has bluntly, and consistently, provided that the power to regulate schools, their construction, and site plans for them, solely and exclusively is in the State Superintendent of Public Instruction:

> The superintendent of public instruction has sole and exclusive jurisdiction over the review and approval of plans and specifications for the construction, reconstruction, or remodeling of school buildings used for instructional purposes and of site plans for those school buildings. MCL 380.1263(3), MSA 15.41263(3) (Emphasis added).

As is well-stated and elaborated upon by the Brief filed in this matter by the Defendants-Appellees, and as the lower court observed, this statute is clear and unambiguous. Nor is there any probative legislative history offered to get around this "plain meaning." And as the leading commentator on statutory interpretation has observed, quoting and summarizing from numerous cases, "the plainer the language, the more convincing contrary legislative history must be to overcome the natural purport of a statute's language." *Sutherland's Statutory Construction*, Singer (4th ed), § 48.01.

Quite to the contrary, the legislative history of the above provision has long and consistently been interpreted to show that this "sole and exclusive" jurisdiction was intended to provide immunity on the part of schools from intrusion by local governments. Attention is again invited to *Attorney General Opinion No. 2792*: "It is thus apparent that townships may not exercise any regulatory control over the construction of schools unless authority be specifically granted or unless it be a matter of strictly local concern." OAG, No 2792, *supra.*

After reviewing Michigan's Constitution and the relevant statutes, the Attorney General concluded:

> Although it is clear that the legislature may delegate some control to local state agencies, there is absolutely no evidence that any such control has been delegated in the matter of school construction. In fact the legislature by the terms of P.A. 1937, No. 306, has expressly pre-empted the entire field of regulation of school construction. The last-cited statute sets out in detail all of the provisions relating to school construction and embraces the entire field. *Id.* (Emphasis added)

As noted in Defendants-Appellees' Brief, the Attorney General concluded the same 40 years later, in OAG, 1996-97, No 6957 p166 (Sept 30 1997), and the two

statutes in question have exempted school construction from Local Historic Districts' attempt to regulate it as well.

That Opinion relied in part on *Dearden,* which held that the Michigan department of Corrections was immune from local zoning. Yet the statutory language relied upon by the Michigan Supreme Court in that case was "exclusive jurisdiction" as opposed to the even more emphatic "sole and exclusive jurisdiction" provided to the State Superintendent of Instruction in the case of schools; even still the Court found the

> Language as a clear expression of the Legislature's intent to vest the department with complete jurisdiction over the state's penal institutions, subject only to the constitutional powers of the executive and judiciary, and not subject in any way to any other legislative act, such as the zoning enabling act. *Dearden, supra,* at 403 Mich at 260.

Furthermore, in *Twp of Burt*, this Court referred to section 1263 of the Revised School Code by noting that subsequent "legislative amendments" had overturned prior decisions in *Lutheran High School Ass'n v Farmington* Hills, 146 Mich App 641, 381 NW2d 417 (1985) and *Cody Park Ass'n v Royal Oak School Dist,* 116 Mich App103, 321 NW2d 855 (1982). *Twp of Burt, supra,* 459 Mich at 664, n. 3. Since both cases had held that the school district was subject to local zoning ordinances, the Supreme Court recognized it was the Legislature's intent to exempt school authorities from local regulations in all constructions projects by enacting section 1263.

Another "Extrinsic Aid" which is useful, according to *Sutherland's Statutory Construction, supra*, are comments about an earlier act in legislative committee reports, which are "entitled to consideration as an expert opinion concerning its proper interpretation." *Id.*

Attention is invited to the counterpart in the Michigan Legislature to legislative committee reports: in this case, a "House Legislative Analysis" of House Bill 5654, attached as Exhibit A, as that bill existed in Substitute form on June 4, 1998. The following provides the Legislature's description of what the bill, in appropriate part, was intended to do:

> Repeal. Besides repealing the school construction code act (Public Act 306 of 1937), the bill also would repeal a section of the Revised School Code (MCL 380.1263). This section of the school code, added in 1990, prohibits a school board from designing or building a school building to be used for instructional or noninstructional purposes or from designing and implementing the design for a school site unless the design and construction complies with Public Act 306 of 1937 (the school building construction law). The section also says that the state superintendent "has sole and exclusive jurisdiction over the review and approval of plans and specifications for the construction, reconstruction, or remodeling of school buildings used for instructional or noninstructional purposes and of site plans for those school buildings. House Bill 5645, House Analysis Section (June 4, 1998).

This House Legislative Analysis of House Bill 5654 makes it quite clear that the proponents of this Bill had a full and definite understanding of what the law was then, and still is, at this time: exclusive jurisdiction in the State Superintendent of Instruction over schools and immunity from regulation by local municipalities. This is because the bill would have explicitly repealed and amended the very statutes which the Courts have interpreted and relied on, and the Attorney General has opined upon, for decades. Even the *Michigan Townships Planning and Zoning Handbook*, Hotaling and Moffat, (Revised Edition), indicates the same under its reference to "Local School District Involvement" at page 26: "Schools and school-related facilities are planned and built by the school districts. The school boards decide where they will build schools and other facilities." (Emphasis added).

It comes as no surprise, in light of this view, that the House Legislative Analysis, at page 6, indicated that "The Michigan Municipal League supports the bill. (6-3-98)," and that "The Michigan Township Association supports the bill. (6-3-98)." House Bill 5654, House Legislative Analysis, *supra*.

The day before the date mentioned immediately above, and two days before the issuance of the House Legislative Analysis, there was a hearing on the Bill in question before the House Labor and Occupational Safety Committee. Attached as Exhibit B is a partial transcript of the tape of that committee hearing, which provides the full testimony of the Michigan Townships Association, in support of the bill. It references this very litigation then in Wayne Circuit Court (Transcript, p. 2), and indicates, in part, that the school buildings wouldn't be inspected by a "local inspector because of the current status of inspections." And "[t]his bill will correct those problems. It will correct the problems of this suit, and we are here to support it and I'll be happy to answer any questions you may have." House Bill 5645, Transcript of Hearing Before House Labor and Occupational Safety Committee, p 3 (June 2, 1998).

One of the legislators on the Committee, Representative James Agee of Muskegon, asked the following question, and received the following answer from the Township Association's lobbyists, at p. 4 of the Transcript:

> REP. AGEE: Thank you. Pat-- and, I would not--I hope no one would assume that the question I'm asking will have anything to do with, with what position I would take regarding the bill. However, would you agree that the fact that we now are changing the way, right or wrong, the way zoning is determined, that the purpose of the bill now is much more than a bill to determine inspection of the schools? It also deals with an entirely new issue, right or wrong, which is zoning, and with the school previously having the right to veto, if that's the appropriate word. So the bill really with this change takes on a whole new, goes in a whole new direction, would you agree?

> MS. MACAVOY: Well, I would say that that clearly clarifies that issue because there are many opinions out there right now that, on the issue of zoning that the current status is that a locals do have authority over zoning. I guess it depends on which attorney you're talking to on that issue. *Id* at p 4.

The House Legislative Analysis and this portion of the transcript of the hearing on House Bill 5654 clearly show what the status of the law was, and is, in the minds of the Legislature. They also show that this present lawsuit was, at the very least, in the minds of advocates of the bill, when they were attempting a legislative solution.

These attempts to change the existing law by promoting legislation to do so would seem at least unnecessary if, as the two *Amicus Curiae* said in their Brief in support of the Charter Township of Northville at the circuit court level:

> The zoning enabling acts herein before cited are comprehensive clear and unambiguous in authorizing local government to regulate land development within their respective jurisdictions. There is no indication that the legislature intended to remove that authority with respect to the development and location of schools and school grounds.

As was so well stated by Queen Gertrude in William Shakespeare's *Hamlet, Act III, Scene ii:* "The lady doth protest too much, methinks."

The Trial Judge in this case correctly surmised that the then Plaintiffs were urging the court to "legislate." Attention is invited to the transcript of the arguments on Plaintiffs' Motion for Summary Disposition at page 18. After Plaintiffs' Counsel argued that their interpretation of existing law required comportment with local charter township zoning ordinances and inspections, the Court responded: "That's a very nice legislative scheme. I suggest you go to Lansing and push for that." When the oral arguments later centered on the demise of House Bill 5654 noted above, the court reiterated by asking:

"Is it true this bill was submitted to the legislature containing pretty much the argument you're making to this court today and they refused to pass?" Even though Plaintiffs denied it, the Court looked askance at such putative innocence and concluded as follows at page 33 of the Trial Transcript:

> THE COURT: That's what you're asking me to do today. You're asking me to pass legislation.
>
> MR. TAMM: What's I'm asking you to do is look at those 36 words and reads (sic) them in a manner that a reasonable interpretation will give.
>
> THE COURT: I will, and I have, and I've heard enough.

The Court went on to rule as follows:

> I think everybody agrees the decision on this issue revolves around the construction of MCLA 380.1263 subsection 3, which I'm not going to read the entire statute. It's the last sentence that is the most important:
>
> > The superintendent of public construction has sole and exclusive jurisdiction over the review and approval of plans and specifications for the construction, reconstruction, or remodeling of school buildings used for instructional or non-instructional school purposes and of site plans for those school buildings.
>
> As you have stated, it's commonly referred to as the school code. School code was amended in 1990 and added this subsection.
>
> Prior to that I agree there's the Cody Park Royal Oak School case and the Lutheran High School Association case. I think in lieu of the fact that the legislature chose to amend this subsequent to those cases, I think it's clear that this court has very limited right to expand this act other than what it says.
>
> The language couldn't be more clear. And when a statute is clear and unambiguous there's no need to resort to legislative history. This statute grants the superintendent of public

> construction the sole and exclusive review and approval of plans, specific and site plans.
>
> I know plaintiffs argue that the term site plan refers to construction site plans and not site plans for purposes of zoning, but the I have to agree with the defendants in this case that when we're talking about schools, we're talking about a unique situation. They have always been kept separate.
>
> I think the legislature is clear in what they're saying. If they're not clear, it is not for this court to rewrite this legislation. Therefore, I think it needs to be applied as written and there's no construction necessary. There's no need for the court to interpret the meaning or resort to any legislative history the language is clear; sole and exclusive jurisdiction to me means exactly that.
>
> I don't think the legislature intended the schools to be subject to local regulation, nor did they expect to be subject to any judicial requirements that they complied with local regulations.
>
> I do not find any merit that this statute is unconstitutional. Therefore, plaintiff's motions are denied. (Trial Transcript, pages 36-38)

A number of events of significance to this case have occurred since this ruling by Judge MacDonald. First, and as noted above, this Court in *Twp of Burt a*greed with her conclusion that the disputed language was enacted by the legislature in response to and to reverse the holdings in the earlier cases the then Plaintiffs relied upon.

Second, and as no surprise, additional bills were introduced in the Legislature after her ruling to enact changes in school plan reviews and inspections, what codes apply or don't, and who enforces them. Attention is invited to the attached Bill Analysis of Senate Bill 805 which was introduced on October 10, 1999, and excerpts from the 50-plus-pages of Senate Bill 463 which were debated in the Legislature (both attached as exhibit C). Again, the Legislature is the proper forum for such decisions, as the Trial Court herein forcefully concluded. And finally, within a very short period of time after the Court of

Appeals issued its decision in this case affirming the exemption of schools from local zoning, on August 17, 2001, legislation was once again introduced that would have overruled that ruling. On October 11, 2001, House Bill 5187 was introduced that would have deleted the language relied upon and interpreted by the Court of Appeals and the Wayne Circuit Court. Further, it went on to say that "All local zoning laws generally applicable in the jurisdiction where the public school will be located apply to the location and siting of the public school," then further put a burden on the public school and its board to ensure that there was compliance with those zoning provisions. And once again, this bill did not pass; after its introduction and referral to committee, the Legislature took no further action on it and the bill died when the Legislature adjourned at the end of the Session. House Bill 5187, its House Legislative Analysis, and its history, are attached as Exhibit D. Once again, and after a Court of Appeals opinion clearly interpreting the language of the Revised School Code to exempt schools from local zoning, the Legislature refused to overturn the ruling by not passing a bill aimed directly at it.

This attempt to provoke this Court to overturn an exemption from a statute, well-established by court opinions and legislative rejections of bills to do so, is reminiscent of the United States Supreme Court ruling in *Flood v. Kuhn,* 407 U.S. 258, 92 S.Ct 2099 (1972). The extremely interesting and entertaining majority opinion by Mr. Justice Blackmun concerned the exemption the sport of baseball enjoys from antitrust laws which was based on an interpretation of those statutes in the Court's prior opinion in 1922 written by Justice Oliver Wendell Holmes in *Federal Baseball Club v. National League, 259 U.S. 200 (1922).* As phrased by Mr. Justice Blackmun, "For the third time in 50 years the Court is asked to rule that professional baseball's reserve system is within

the reach of the federal antitrust laws." After a thorough review of the substantive merits, but also of the history of the prior cases, embellished by recitation of "Casey At The Bat" and other panegyrics to the sport, he noted that "Legislative proposals have been numerous and persistent," with over 50 bills having been introduced regarding the applicability of antitrust laws to baseball, but none of them ultimately were passed or signed into law. Thus, "The Court, accordingly, has concluded that Congress as yet has had no intention to subject baseball's reserve system to the reach of the antitrust statutes. This, obviously, has been deemed to be something other than mere congressional silence and passivity." 407 U.S., *supra,* at 284. He then concluded his opinion by stressing: "And what the Court said in *Federal Baseball* in 1922 and what it said in *Toolson* in 1953, we say again in 1972: the remedy, if any is indicated, is for congressional, and not judicial action." *Id.* At 286.

Judge MacDonald and the Court of Appeals are in good company when they refused the invitation to legislate. Attention is invited to *A Matter of Interpretation*, Scalia, (1997), in which U.S. Supreme Court Associate Justice Antonin Scalia takes major issue with judicial activism in the guise of statutory interpretation. After reviewing numerous historical authorities dating back to the Federalist Papers, he notes as follows:

> We live in an age of legislation, and most new law is statutory law. As one legal historian has put it, in modern times "the main business of government, and therefore of law, [is] legislative and executive.... Even private law, so-called, [has been] turning statutory. The lion's share of the norms and rules that actually govern[] the country [come] out of Congress and the legislatures.... The rules of the countless administrative agencies [are] themselves an imporant, even crucial, source of law. This is particularly true in the federal courts, where, with a qualification so small it does not bear mentioning, there is no such thing as common law. Every issue of law resolved by a federal judge involves interpretation of text–the text of a regulation, or of a statute, or of the Constitution. Let me put the Constitution to one side for the time being, since many believe that that

> document is in effect a charter for judges to develop an evolving common law of freedom of speech, of privacy rights, and the like. I think that is wrong–indeed, as I shall discuss below, I think it frustrates the whole purpose of a written constitution. But we need not pause to debate that point now, since a very small proportion of judges' work is constitutional interpretation in any event. (Even in the Supreme Court, I would estimate that well less than a fifth of the issues we confront are constitutional issues–and probably less than a twentieth if you exclude criminal-law cases.) By far the greatest part of what I and all federal judges do is to interpret the meaning of federal statutes and federal agency regulations. Thus the subject of statutory interpretation deserves study and attention in its own right, as the principal business of judges and (hence) lawyers. It will not do to treat the enterprise as simply an inconvenient modern add-on to the judge's primary role of common-law lawmaker. Indeed, attacking the enterprise with the Mr. Fix-it mentality of the common-law judge is a sure recipe for incompetence and usurpation. *A Matter of Interpretation*, Scalia (1997)

The same judicial restraint and deference to the legislative process and its results is the rule on the state level in Michigan. Attention is invited to *Glancy v. City of Roseville*, 457 Mich 580, 577 NW2d 897 (1998) in which the Court was asked to establish a rule of law in the governmental immunity area by judicial fiat. It refused to do so, and stated:

> The Legislature, with its ability to consider testimony from a variety of sources and make compromise decisions, is much better positioned than the judiciary to consider such policy arguments and make policy choices. 'The responsibility for drawing lines in a society as complex as ours—of identifying priorities, weighing the relevant considerations and choosing between competing alternatives—is the Legislature's, not the judiciary's.' (citation omitted) 'Under the Michigan Constitution and its division of power between the Legislature and the judiciary, [the judiciary] is only authorized to implement statutes, not change them in response to policy arguments, regardless of how persuasive.' (citation omitted) In other words, while the judiciary has authority to formulate policy regarding common-law issues, which could include adopting a bright-line rule, it may not adopt rules that change statutes on the basis of policy arguments. Rather, the judiciary's role in determining the policy behind a statute is an attempt to determine the policy choice the Legislature made. *Glancy, supra*, 577 NW2d at 902.

See also *Judicial Attorneys Ass'n v State,* 460 Mich 590, 597 NW2d 113 (1999),

particularly footnote 6; *Tyler v Livonia Public Schools,* 459 Mich 382, 590 NW2d 560 (1999), and *Kerberskey v Northern Michigan University* 458 Mich 525, 582 NW2d 828 (1998) espousing and exercising the same restraint and deference.

These cases and treatises, and the principles they espouse, warrant the conclusion that this Court, as did the Trial Court below, should refrain from changing the statutory scheme for review of school building plans and projects, particularly when the Legislature is dealing with the same subject at the very same time.

II. THE REVISED SCHOOL CODE PROVIDES AN APPROPRIATE DELEGATION OF AUTHORITY TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR THE EXERCISE OF HIS SOLE AND EXCLUSIVE JURISDICTION OVER THE PLANS, SPECIFICATIONS, AND SITEPLANS OF SCHOOL BUILDING CONSRUCTION.

Plaintiffs-Appellants assert that the particular statute involved in this case is unconstitutional, in any event, because it delegates "unbridled" discretion to the Superintendent of Instruction to review and approve site plans "without the guidance of a single standard." Authority for this purported unconstitutionality is reliance on certain Michigan cases, but also on a pair of extremely venerable United States Supreme Court decisions. The latter were decided 64 years ago, coinciding with the New Deal, the clash between the Congress and President on one hand, and the Supreme Court on the other to work the Country out of the Great Depression. In both, *Panama Mining Co v Ryan,* 293 U.S. 388, 55 S Ct 241, 79 L Ed 446 (1935) and four months later in *Schechter Poultry Corp v United States,* 295 U.S. 495, 55 S Ct 837, 79 L Ed 1570 (1935), the Supreme Court found the respective delegations of authority to be invalid. Since then, however, the absolute and total opposite has been true. Attention is invited to *Administrative Law,* Swartz (3rd ed) pages 47-59 which describes the consistent rejection of the delegation argument by the Supreme Court. As the author notes, quoting many sources:

> *Panama* and *Schechter* are the only cases in which delegations were Invalidated by the Supreme Court. Since them, 'we have upheld ... without deviation, Congress' ability to delegate power under broad standards.' *Id* at p 49.

And further,

> In the fifty years since *Schechter* was decided, the Court has constantly rejected delegation challenges. Since 1935, the Court has upheld statutes

containing only vague standards and statements of policy and delegating very broad discretion. *Id* at p 51.

As noted by the author, the Supreme Court has refused to strike down statutes being challenged on this basis even though the delegations involved have been broad, such as in *Yakus v. United States,* 321 U.S. 414 (1944). In that case involving the Emergency Price Control Act of 1942, the Price Administrator was delegated the power to establish "such maximum price or prices as in his judgment will be generally fair and equitable and will effectuate the purposes" of the Act. Attention is invited to a further discussion of *Yakus* subsequent cases in *Administrative Law, supra*, at pages 48-61.

Turning to the fate of challenges to delegation in Michigan law, they seldom are successful. The lead case in this area is *Dep't of Natural Resources v Seaman*, 396 Mich 299, 249 NW2d 206 (1976). In that case, as well as most others, the Michigan Supreme Court upheld a broad delegation of power to the Director of the Department of Natural Resources. It also developed a three-part test for adequate standards, which is well described and explained in *Michigan Administrative Law*, LeDuc, Sections 2.06 and 2.07. The Court's directive is to: (1) Read the statute as a whole; (2) Review for reasonably precise standards; and (3): Construe to uphold the statute, if possible. *Id* at § 2.07. Of particular note here is the emphasis placed on the first part of this test because the plaintiffs in *Seaman*, as in this case, relied only on one section of the act in question to sustain their delegation argument. The Court, however, indicated that the statute involved had to be read as a whole and that, in addition to that section which delegated the "raw power of the Director to act", the rest of the legislative directive, found also in other sections of the law, had to be considered as well. And in doing so, "reading the act

as a whole, there were adequate standards to insure that the will of the Legislature will be given substance and effect as a result of the director's factual determination." *Id.*

Attention is again invited to authority relied upon by Plaintiffs-Appellants in this case: *Westervelt v Natural Resources Commission*, 402 Mich 12, 263 NW2d 564 (1978). Closer scrutiny of the facts and results in that case show that the Michigan Supreme Court, relying in large part on the test formulated in *Seaman,* again upheld a broad delegation of power. And, once again, stressed that the standards test is met if the "legislation contains, either expressly or by incorporation , standards reasonably as precise as the subject matter requires or permits...." (underscoring added). *Id* at 576. The Court reiterated the need not only to look beyond the particular section of the statute challenged, and the overall statutory scheme of which it was a part, but also other statutes, including Federal law:

> And the extent to which this Court has recognized that the "standards test" must be flexible and adaptable to the exigencies of modern-day legislative and administrative government is evidenced in *Pleasant Ridge v. Governor*, 382 Mich 225, 169 NW2d 625 (1969), where the Court, although admitting that the challenged legislation "contains no standards within our constitutional rule" (Citing *Osius*), upheld the delegation in question on the grounds that the legislation incorporated by reference a federal statute which did contain constitutionally sufficient "standards." *Westervelt, supra,* 402 Mich at 574.

In this case, the Revised School Code's Section 1263(3) which gives the Superintendent of Public Instruction the sole and exclusive review power at issue here also requires, and thus incorporates by reference, that school buildings meet the standards contained in the School Building Code, and its numerous requirements found in MCLA 388.851 *et.seq.* Perusal of that statute indicates an elaborate set of requirements that have to be met prior to the Superintendent's approval, such as the need for a registered

architect or engineer to prepare the plans and supervise the construction, approval from the State Fire Marshal, and also health department approval as to such things as water supply, sanitation and food handling. Those requirements, in turn, bring into play many other statutes, building and fire codes, and administrative rules, and the interplay of a number of cooperating state agencies enforcing them, as the depositions taken in this case show. For these reasons, it is abundantly clear that the many standards at play in this matter meet the requirements as described by the Michigan Supreme Court for a proper delegation of authority, and that Plaintiffs-Appellants claim to the contrary is without merit.

CONCLUSION

The Township Association's legislative testimony corroborates the Defendants-Appellees' Statement of Facts in what happened: the Northville Public Schools bent over backwards to reach agreement with the Township as it planned and began construction on the new high school even though it was not required to do so: "they have been negotiating for some period of time in an attempt to, to get the building constructed." (Testimony, page 2) But at some point in time, at came down to the issue of a final decision, and who makes it, as was predicted and discussed since at least in the *Attorney General* case decided in 1912, and ever since. The State Constitution, statutes, and caselaw make it abundantly clear that education is a primary responsibility of the State government of Michigan, implemented through local school districts and their boards of education. And in fulfilling that responsibility, schools are immune from local zoning regulations, as evidenced by clear and unambiguous statutory language. The fact that bills were frequently introduced, promoted, but then defeated to change that places the

decision in the appropriate forum: the Legislature. Ultimately, it is a question of political accountability in the democratic process; at the local level by local voters taking action regarding the local school board and its proposals, and then also through the Michigan Legislature and what it does, and more important here, does not pass into law. The following concluding paragraph in the Court of Appeals opinion below summarizes it well, 247 Mich. App. 176, at 189, 635 N.W.2d 508 at 514:

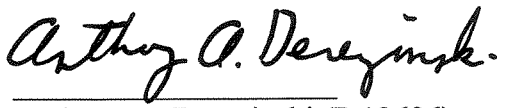
> In the present case, it is undisputed that school officials involved with the design and construction of new public school facilities are highly proximate to the elective process. The local school board involved in this case convinced local voters to approve a large bond issue to support construction of the new high school on the property at issue. Further, the superintendent of public instruction is appointed by the state board of education, a body elected directly by the people of this state. Const 1963, art 8, § 3. If intervenors take issue with the decisions made by these school officials regarding the design and construction of new school facilities, then their recourse is found in the polling booths during school elections, not in the courts. We conclude that the trial court properly rejected intervenors' claim of unconstitutional delegation of legislative authority.

And for these reasons the Plaintiffs-Appellants' attempts to change the state statutes in this forum should not be countenanced, and the Court of Appeals' decision should be affirmed.

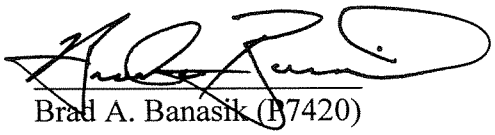
RELIEF

Amicus Curiae, the Michigan Association of School Boards, urges this Honorable Court to affirm the decision of the Court of Appeals, which held that local zoning authorities are precluded from exercising jurisdiction over the review and approval of school building construction projects, including the site plans for those projects, and that section 1263(3) of the Revised School Code is constitutional.

Respectfully Submitted,



Anthony A. Derezinski (P 12696)



Brad A. Banasik (P57420)

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Dated: January 23, 2003

EXHIBIT A

House
Legislative
Analysis
Section

Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

SCHOOL CONSTRUCTION

House Bill 5654 (Substitute H-3)
First Analysis (6-4-98)

Sponsor: Rep. George Mans
Committee: Labor and Occupational Safety

THE APPARENT PROBLEM:

The construction of school buildings is subject to Public Act 306 of 1937 (the school construction act) and not to the State Construction Code Act. This means school buildings are not subject to the same set of structural, mechanical, and electrical standards as other buildings, nor are they subject to the same level of scrutiny. Public Act 306 is concerned mainly with fire safety and health inspections. It is generally understood that inspectors at the state and local level who typically oversee building projects do not have jurisdiction over the building of schools. The jurisdiction lies instead with the state school superintendent, who has apparently delegated the task to the state fire marshal, who provides fire safety inspections, while the Department of Consumer and Industry Services (formerly the Department of Labor) carries out electrical inspections for the state fire marshall. In some cities, reportedly including Lansing and Detroit, school officials and municipal building departments collaborate but that is done voluntarily. Schools are required to hire architects and, it is said, it is up to school districts to negotiate with architects for the desired level of building oversight services.

In recent years, public attention has been focused on the problem of shoddy construction of schools. One middle school, in the Woodhaven School District, has had to be almost wholly reconstructed even though it was originally built only in 1976. Reportedly, the exterior walls of the school were not properly connected to the building's steel frame and were in danger of collapsing. More recently, a Petosky middle school that was built in 1990 at a cost of $9 million to the school district taxpayers had a defective roof that leaked from the time it was installed, despite the fact that a construction manager was on-site daily and the architect made periodic visits during construction. Indeed, when the school district finally sued the architect, evidence was presented that both the architect and the construction manager both knew that the roof had substantial and numerous problems during construction. According to testimony during the trial, the architect told the construction manager to have the contractor fix the problems (reportedly, the Gladwin-based roofing contractor made 23 trips back to the middle school before going bankrupt, and the school district had to hire another roofing contractor to look at the problem), but apparently nobody checked to see if the problems had been corrected before the school was given the go-ahead to pay the roofer. The district estimates that the defective roof will have cost it $425,000 before the problem will be adequately addressed. (The estimate reportedly includes the $150,000 worth of court-related costs, eight years of constant repairs to the roof, and the projected cost of replacing the roof.) While the attorney for the architect reportedly blamed the construction manager as the negligent party, a jury found the architect liable based on professional negligence and breach of his contract under the law to protect the owner-school district. During the trial, the architect's attorney reportedly suggested that the school could have paid the architect an additional fee to have the architect's representative on site more frequently, at a cost of $75 per hour. However, the attorney for the school pointed out that the architect was already being paid over $750,000 ($460,000 in architect's fees, an additional $198,500 for the construction manager's fee, $10,000 for a model of the school, $30,000 for printing plans and specs, and $53,000 in "miscellaneous" costs) to protect the owner's interests under basic services. Though the construction manager settled before the trial and the jury awarded the district $147,500 in damages on January 20, 1998, the district has yet to collect either the settlement or the jury award. Other recent cases include that of an elementary school in the Petosky school district whose roof reportedly started "coming apart" while children and teachers were in the five-year-old building, problems with a $16.8 million Gaylord high school built in 1994 (which had met fire code requirements, but which has had problems with heaving in the cement in front of the school's main entrance, ventilation problems due to windows that couldn't be opened, cracking in the

brick facade, and roof leaking problems), and serious injury to an ironworker working on a new DeWitt school due to shoddy work done by the contractor earlier in the construction project.

Because of these and other cases in which school buildings were discovered to have structural flaws, some people believe that it makes sense to subject the construction of school buildings to the same codes, permit process, plan reviews, and inspections to which other major buildings, including residential buildings, are subject.

THE CONTENT OF THE BILL:

The bill would, generally speaking, bring school buildings under the State Construction Code Act, and would repeal the school construction code act (Public Act 306 of 1937).

Administration and enforcement. The bill would require all plans and specifications for school buildings to be submitted to the department, and, with two exceptions, would make the director of the Department of Consumer and Industry Services (DCIS) responsible for administering and enforcing the act and the code in each school building in the state, unless he or she had delegated this responsibility to the applicable local enforcing agency.

Delegation of responsibility for administering and enforcing the act and the code could occur under the act's current provisions, which allow local subdivisions of government to exempt themselves from the state code by adopting and enforcing a nationally recognized model building code. Alternatively, a new provision in the bill would require the director to delegate authority for the administration and enforcement of the act to the applicable agency if he or she had determined that the code officials, inspectors, and plan reviewers who would conduct plan reviews and inspections of school buildings had the necessary experience to perform these duties. (These code officials, inspectors, and plan reviewers also would have to be registered under the Building Officials and Inspectors Registration Act.) The bill would delete a current provision requiring the concurrence by the relevant school authorities before locally adopted codes can apply to schools.

If there was no delegation of responsibility for administering and enforcing the act and the code, then the Bureau of Construction Codes (in the Department of Consumer and Industry Services) would perform all school building plan reviews and inspections required by the State Construction Code Act. A school building could not be constructed, remodeled, or reconstructed after the effective date of the bill until written approval of the plans and specifications had been obtained from the bureau indicating that the school building would be designed and constructed in conformance with the State Construction Code Act. However, this requirement would not apply to a school building for which construction had begun before the effective date of the bill, nor where the director of the department had determined that the code officials, inspectors, and plan reviewers who would conduct plan reviews and inspections of school buildings had the necessary experience to do so.

Fire prevention code. The bill would not affect the department's responsibilities under the Fire Prevention Code, and would require the Bureau of Construction Codes and the Office of Fire Marshall (both of which are in the department) to jointly develop procedures to use the plans and specifications submitted to the department in carrying out the requirements of the State Construction Code Act and the Fire Prevention Code. A certificate of occupancy could not be issued by the appropriate code enforcement agency until a certificate of approval had been issued under the Fire Prevention Code.

Role of architects and engineers. All plans and specifications for school buildings (whether for instructional or noninstructional school buildings) would have to be prepared by a licensed architect or professional engineer, who also would be responsible for designing the building of adequate strength so as to resist fire and for providing plans and specifications which conformed to applicable building and safety code requirements.

The bill also says that construction of an instructional or noninstructional school building would have to be supervised by an architect or professional engineer licensed to practice architecture or professional engineering in this state "deemed qualified by the school district if the manager has specifically been contracted by the school district to supervise, coordinate, and manage all construction activities." [Note: This language is the result of an amendment to an H-2 version of the bill, which deleted "or a construction manager" which immediately preceded "deemed qualified by the school district." According to the Legislative Service Bureau, this language will be amended.] A person who contracted with the school district to manage and supervise construction of a

school building would be responsible for constructing those buildings (a) of adequate strength to resist fire and (b) in a "workmanlike manner, according to the approved plans and specifications."

"School construction." The bill would define "school construction" to mean a structure in which six or more pupils received instruction. The term also would apply to a structure owned, leased, or under the control of a public or private K to 12 school system or a community college or junior college. The definition would not include a "dwelling unit" or a structure owned, leased, or under the control of a college or university.

Repeal. Besides repealing the school construction code act (Public Act 306 of 1937), the bill also would repeal a section of the Revised School Code (MCL 380.1263). This section of the school code, added in 1990, prohibits a school board from designing or building a school building to be used for instructional or noninstructional school purposes or from designing and implementing the design for a school site unless the design and construction complies with Public Act 306 of 1937 (the school building construction law). The section also says that the state superintendent "has sole and exclusive jurisdiction over the review and approval of plans and specifications for the construction, reconstruction, or remodeling of school buildings used for instructional or noninstructional school purposes and of site plans for those school buildings."

MCL 125.1502 et al.

FISCAL IMPLICATIONS:

According to an analysis by the Department of Consumer and Industry Services (dated 3-23-98) on the bill as introduced, the Bureau of Construction Codes (which, along with the Office of Fire Safety, is one of two offices in the department that would be affected by the bill) believes that fees charged under the State Construction Code Act for permits, plan reviews, and inspections will cover the cost of any increased responsibilities under the bill. The responsibilities of the Office of Fire Safety also should not be diminished either, because the Fire Prevention Code of 1941 provides alternative authority to assure fire safety in schools. Finally, the bill also would relieve the Department of Education of its responsibilities under Public Act 306 of 1937, though since many of these responsibilities currently are being carried out by the Office of Fire Safety under an agreement with the Superintendent of Public Instruction it is uncertain how great this impact would be.

ARGUMENTS:

For:

The current lack of mandatory structural inspection of school building construction poses potentially serious safety issues as well as potentially costly repairs and possible litigation costs when school construction projects are not adequately inspected during their construction. In New York state, as the result of an incident in which six elementary school children were killed when an unbraced and improperly supported wall fell on them, legislation was enacted implementing a mandatory structural safety inspection program. While no deaths from shoddy school construction have been reported in Michigan, there has been at least one instance in which a construction worker was seriously injured in the course of his work due to earlier shoddy construction work allowed at a school construction site. Before any further such accidents or even deaths of schoolchildren occur in Michigan, stronger construction inspections should be enacted into law.

In addition to the potential safety issues, inadequately inspected construction can be financially costly to school districts as well. As a number of shoddy school construction problems have vividly illustrated, substandard materials and workmanship are allowed by the exemption of school buildings from the State Construction Code Act that covers the construction of other major buildings in Michigan. That exemption means that when schools are under construction, no state or local authority is required to be on site to inspect the walls, the foundation, or the roof to certify that state construction codes are being met. Instead, school construction falls under Public Act 306 of 1937, which makes the architect responsible for "supervising" the construction of his or her own project, and the act doesn't mention construction managers, a profession that didn't exist 60 years ago.

When the school construction code act was enacted in 1937, schools were not as extensively used by communities for a variety of activities before and after the school day commenced. Today, however, school buildings are used not only to instruct schoolchildren but to house a variety of programs such as latch-key programs, day care programs, and meeting areas for community groups, such as senior citizen groups, evening PTO and PTA meetings, scouting meetings,

and for fund raisers. In addition, sixty years ago, athletic activities and events generally were held during the school day, whereas today many such events are held on evenings and even weekends. Given such intensive use of these important community buildings, it is more important than ever that the buildings be constructed in a safe manner comparable to what is required of other major buildings in the state.

The aim of the bill is to make school buildings subject to the same construction codes and inspections as other major buildings and thereby avoid any repetition of the construction of structurally flawed, unsafe school buildings. The bill requires the Department of Consumer and Industry Services to approve plans and oversee construction of schools or else delegate the responsibility to competent local officials. Currently, schools can be built without any oversight by state or local inspectors, except for checks for compliance with fire safety and health regulations. Under this proposal, schools will be subject to the permit, plan review, and inspection requirements of the state construction code.

The bill will protect students, school personnel, and the public, and save school districts the expense of repairing or even reconstructing flawed buildings. There appears to be no good reason why school buildings should not be subject to stringent codes and inspections. Also, some people argue that currently it is not clear where the responsibility lies for the costs associated with unsuccessful school building projects; this bill will clarify that issue.

For:

In a separate but related issue, a dispute between school and municipal officials in Birmingham raised the question of who at the local level has authority over site selection and planning decisions when the construction of a school or school-related facility is proposed. Municipal officials have argued that zoning and site plan review should be their responsibilities, while school officials have argued for at least a neutral zoning dispute resolution mechanism. As a result of the Birmingham dispute (which reportedly was over tennis courts or the placement of fences around tennis courts), a provision was added to the School Code in 1990 that says that a school board can't design or build a school building or design and implement the design for a school site unless the design and construction complies with Public Act 306 of 1937 (the school building construction law). The section also says that the state superintendent "has sole and exclusive jurisdiction over the review and approval of plans and specifications for the construction, reconstruction, or remodeling of school buildings used for instructional or noninstructional school purposes and of site plans for those school buildings." Though the State Construction Code Act does not deal with planning and zoning issues, the bill would repeal Public Act 306, and thus would have some impact on School Code provisions that cite that act. By repealing the section of the school code added in 1990, the bill would remove this concern. At the same time, the bill would add language to the State Construction Code Act that would serve to provide a cause of action for school districts against architects for failure to prepare and design school buildings "of adequate strength to resist fire and for providing plans and specifications which conform to applicable building and safety code requirements. The bill also would preserve language (from the school construction code act) that would make persons who contracted with school districts to manage and supervise construction of school buildings responsible for constructing those buildings "of adequate strength so as to resist fire" and "in a workmanlike manner, according to the approved plans and specifications." Finally, the bill would apply to noninstructional as well as instructional buildings, thereby assuring that minimal structural safety inspections would be required for all structures "affording a facility or shelter for use or occupancy by persons" (in the construction code act's definition of "building"), including such structures as bleachers, and so forth.

Response:

According to school officials, shifting authority over site plans is an issue separate and distinct from the purported safety and litigation issues addressed by the bill, and should be dealt with in a completely different bill of its own.

Against:

While the concept of improving the supervision of the construction of school buildings is a good one, school official have a number of financial concerns about this bill. For example, they are concerned about the additional costs that may be involved under the process mandated by the bill, both because of what the Department of Consumer and Industry Services has said it typically charges in fees (reportedly one-half of one percent of the total project cost) for permits, plan reviews, and inspections and because of the costs of enforcement of duplicate codes with duplicate fees (e.g., the state construction code and the fire safety code). School districts now must pay fees to architects for the planning and oversight of school construction,

and will continue to have some architect costs under this proposal, in addition to new fees from the state or from local building inspectors. Won't there be Headlee implications if school districts are required to pay new costs, in the form of substantial fees to the state for its permits, plan reviews, and inspections? School representatives also are concerned about the potential for delay -- and the concomitant increases in construction costs -- if state inspections are required, as they would be under the bill, as they believe that there currently is a shortage of certified state inspectors and that the Department of Consumer and Industry Services already is struggling to complete those public school inspections for which they currently are (voluntarily) responsible. Finally, school officials claim that the problems that give rise to this bill are unusual and do not typically occur. For example, no one has presented any concrete examples of injuries to or deaths of school children or staff due to faulty construction. If the issue is student safety, then where are the examples of threats to students' safety under current law? If the issue is recovery of damages for faulty or shoddy construction, then why not simply amend existing law to address this issue? Finally, it should be pointed out that the proposed changes to existing statutory language will in all likelihood result in litigation in order to clarify the new language. For example, the proposed language in subsection (3) of the proposed new section 8a would require the director of the Department of Consumer and Industry Services to delegate responsibility for the administration and enforcement of the State Construction Code Act to "the applicable agency." Presumably, this refers to local agencies, but the reference -- and other language in the bill -- is far from clear.

Response:

There are a number of responses to these concerns raised by school officials. First, lack of adequate inspections already has cost a number of school districts hundreds of thousands of dollars, both to repair damage resulting from faulty or shoddy construction and to pay for costly lawsuits in the aftermath of such construction problems. Surely responsible school officials would want to ensure that adequate inspection of construction of school buildings protects both the safety of their students and the effective use of their taxpayers' construction dollars, rather than waiting to take action "after the fact." Secondly, if there are not enough state inspectors to meet statutorily-mandated duties, it is the state's duty to appropriate more money to hire an adequate number of inspectors. In addition, the bill allows alternatives to requiring state inspectors, while continuing to require that state construction standards be met. And although some school districts reportedly are paying more attention to getting better construction inspections as a result of the publicity from the Petosky trial, this always has been an option and, obviously, has not always been exercised. As the transcripts of the Petosky trial indicate, architects and their construction managers or general contractors do not always do the inspections delegated to them under current law. The bill would not allow adequate construction inspections to be merely an option; it would require them, thereby protecting both students' safety and taxpayers' money. Lastly, even though there apparently have been no student or staff injuries or deaths so far under current law, the disaster in New York state (where six elementary school children were killed when a badly-constructed wall fell on them) should not have to occur before action is taken to prevent such tragedies from occurring in Michigan. And though apparently no one was injured, reportedly in March of 1997, the roof of Blackbird Elementary School in Harbor Springs started coming apart while children and teachers were in the building. And there has been at least one documented case of a serious injury to a construction worker, reportedly due to shoddy construction work done earlier in the course of the school construction. Rather than wait until someone dies or until more people are injured, the state should act to prevent, to the extent possible, such results of inadequately inspected school construction.

SUGGESTED AMENDMENTS:

The Department of Consumer and Industry Services recommends deleting the definition of "executive director," as that position was abolished by ERO 1996-2, which restructured the Departments of Labor and Commerce into the Department of Consumer and Industry Services. In addition, the department will recommend specifying that the language in subsection (3) of the proposed new section 8a referring to the director delegating the responsibility for the administration and enforcement "of this act" specify instead the proposed amendatory act, which specifically concerns school construction and not construction of all buildings in general.

POSITIONS:

The Department of Consumer and Industry Services supports the bill. (6-3-98)

The Michigan State AFL-CIO supports the bill. (6-3-98)

The Michigan Chapter of the Air Conditioning Contractors of America supports the bill. (6-3-98)

The Michigan Municipal League supports the bill. (6-3-98)

The Michigan Township Association supports the bill. (6-3-98)

A representative of the Michigan State Building and Construction Trades Council indicated support for the bill. (6-2-98)

The Michigan Association of School Administrators opposes the bill. (6-3-98)

The Michigan Association of School Boards opposes the bill. (6-3-98)

A representative of the Michigan School Business Officials organization indicated opposition to the bill. (6-2-98)

Analyst: S. Ekstrom

*This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

EXHIBIT B

TAPED HEARING

- - - - - - - - - - - - - - - - - - -

In Re: Transcript of oral testimony given by Pay Macavoy on behalf of the Michigan Township Association before the Labor and Occupation Committee of Michigan, House of Representatives,

- - - - - - - - - - - - - - - - - - -

TAPED EXCERPT OF HEARING

of PAT MACAVOY, taken before the Labor and Occupation Committee of Michigan on June 2, 1998.

REP. CHERRY: We have three other people who have asked to speak and I'm going to call on Pat Macavoy from the Michigan Township Association.

MS. MACAVOY: Thank you, Madam Chair, committee members. Pat Macavoy on behalf of the Michigan Township Association. I would like to say that our association will -- is prepared to support 5654(h)(2). The substitute that is before you. It does ensure that inspections of school buildings will be accomplished, and it does a number of other things that I'd like to -- that's going to be very, very positive for schools and the local communities that they are being constructed in.

Yesterday, placed on my desk was some information about a lawsuit that is being filed as we speak with -- between the Northville School District and Northville Township. And the school district and the township have, have been negotiating for some period of time in an attempt to, to get the building constructed. As of this point, though, they have hit a stone wall and the lawsuit is the, is the last resort. They have no where else to go. And I'd just like to cite for you the issues that are going to be part of this lawsuit. The issues are an 80 foot light tower in a soccer stadium next to houses; a serious storm water detention deficit on site; unsafe deficit pond, three-to-one grade where a five-to-one is required; inadequate setbacks of

10 to 20 feet locating a soccer field from the homes. The local ordinance requires a 50 foot setback. They have no money left for landscapings. They intend to clear-cut the property and destroy all of the protected woodlands; 800 parking spaces, too much pavement, and numerous other issues. These are all in addition to the fact that the school building is not going to be inspected by a state inspector and/or local unit of -- local inspector because of the current status of inspections. This bill will correct those problems. It will correct the problems of this suit, and we are here to support it and I'll be happy to answer any questions you may have.

REP. CHERRY: Are there any questions? Representative Freeman.

REP. FREEMAN: What happened to your arm?

REP. CHERRY: Did you want to --

MS. MACAVOY: I, I, I have a standard flip line but it's a birthmark.

REP. FREEMAN: I apologize.

MS. MACAVOY: That's not a problem.

REP. FREEMAN: I thought maybe some -- you got beat up by some legislator and that was pay back.

MS. MACAVOY: No, that's not the case.

REP. CHERRY: Well, are there any other questions relevant to the bill?

REP. AGEE: I have one.

REP. CHERRY: Representative Agee.

REP. AGEE: Thank you. Pat -- and, and I would not -- I hope no one would assume that the question I'm asking will have anything to do with, with what position I would take regarding the bill. However, would you agree that the fact that we now are changing the way, right or wrong, the way zoning is determined, that the purpose of the bill now is much more than a bill to determine inspection of the schools? It also deals with an entirely new issue, right or wrong, which is zoning, and with the school previously having the right to veto, if that's the appropriate word. So the bill really with this change takes on a whole new, goes in a whole new direction, would you agree?

MS. MACAVOY: Well, I would say that that clearly clarifies that issue because there are many opinions out there right now that, on the issue of zoning that the current status is that locals do have authority over zoning. I guess it depends on which attorney you're talking to on that issue.

REP. AGEE: Thank you.

MS. MACAVOY: Okay.

REP. CHERRY: Representative Callahan.

REP. CALLAHAN: Thank you, Madam speaker. I guess I'm a little bit -- I, I am basically for the bill.

And I passed out this Richard Grabowski letter to the, to the members of the committee. You know, one thing -- there are two sets of code in, in the State of Michigan or probably across the state. There, there is, of course, the BOCA code, which is really a performance code. And then when it gets down to single and two-family dwellings, it goes to the CABO code, which is a very specific code. Studs shall be 16 inch centers. They will be two-by-four floor joists depending on the span, blah-blah-blah. And it is very specific and it's really a no brainer. You just follow the drawings, actually is, is probably the larger part of the code. But what we're talking about here, back to the BOCA code, is a specification code. And they really don't care how you do it. If it's a three-hour wall, they don't care if it's seven inches of concrete or five inches of steel or a hundred sheets of drywall, as long as it meets a three-hour fire containment.

Most municipalities, especially as you get into the rural areas, are not qualified to have an on-staff inspector meet the criteria of, of that code. Will it hold 2,000 pounds per square inch? He's got to defer to an engineer. And where I'm heading with this is most municipalities are going to have to out source this ability to inspect to the standards that we are trying to achieve here. And that is going to add added costs.

REP. CHERRY: If you could let her -- she,

she -- I think she has a response to that issue.

MS. MACAVOY: Well, as soon as he's finished --

REP. CALLAHAN: I'm not sure I asked the question yet. The fact that this added cost -- the permitting process, is this going to be able to be recaptured? And I, I don't know that I'm, I'm, I'm putting this on your shoulders. Maybe this should have gone to Rep Mans or -- there's going to be some costs here and -- to do the job right, at least what I would like to achieve, it's going to be expensive. And, and who is going to bear that burden?

MS. MACAVOY: Well, I, I respectfully disagree with that. Right now, in order to be an inspector and in order to be certified and registered with the state, you must receive certain training. And this is training that every inspector in this state must receive. And it's ongoing training and recertification every three years. All of the inspectors receive exactly the same training. If they receive additional training, it is for a specific project and/or whatever. The way that the, the construct -- in my understanding, it doesn't matter whether or not you are an inspector in a very rural area or you are an inspector for the city of Detroit. The training is exactly the same that you must receive from the state.

There are many units of government, small units of government that do not have inspection authority right now, and the state does it for them and/or the county does it. Those units of government that do not have full-time individuals oftentimes contract with other municipalities and form a consortium in order to accomplish that. So one municipality -- four or five municipalities can share one inspector so that everything can be accomplished for all units of government. It is not going to be an additional burden. If the, if a municipality currently has that system in place, have been certified and have received the delegation from the state to perform inspections in this state, they have the people that will be able to perform this. And the way that this bill is written right now, the criteria for a unit of government to perform inspections on school buildings is, number one, they must be certified and registered. They must have certified and registered individuals to do the work. And there is another little, some language in there that says that the department, the director of the construction codes department will determine whether or not that particular municipality has the expertise to perform inspections. If there has never been a school built in that particular community that this is -- a school is now going to be built and the inspector does not have that expertise, maybe the, the director will say that the state

will do it as opposed to the, to the locals. So there is a subjective looking at that particular unit and the expertise that is available as to whether or not the delegation will take place of that authority.

REP. CHERRY: Okay.

REP. CALLAHAN: For the record, I grossly disagree. I am certified and registered and I belong to SMBO, Southeast Michigan Building Officials. Those people do not know what they are expected and thought to know. About 12 years ago there was a building construction site, I think it was in Kansas. Three building inspectors approved something on the job site level. Twelve people died. And I think those inspectors are still in jail. The sophistication -- there is a lot of things that go on, and, and not so much with that Hyatt Regency, but when you get into industrial and institutional buildings, I'm telling you these people, they are good people and they mean well and you put them in an apartment complex all the way down to a duplex, they are absolutely confident. They've done it. They've been there. You get into some of things these engineers lay awake at night thinking of. Wow. They've never seen it.

MS. MACAVOY: Prior to 1990, I probably would have said I understand exactly where you're coming from, but these new inspection or certification requirements came into

be at that time. And by 1992, you could not be an inspector for a municipality unless you were certified and registered with the state. That meant you had to have training. Heretofore, they did not have to have training and anyone can could be an inspector. That is not the case anymore in the State of Michigan.

REP. CHERRY: Thank you. Finished, Representative Callahan?

REP. CALLAHAN: Yeah.

REP. CHERRY: Representative Llewellyn.

REP. LLEWELLYN: Thank you, Madam Chair. Representative Callahan, I have to be on your side of the fence and that's why, why On line 7 -- on page 17, line 9, we have that, those words that says the inspector has to be determined by the director to have the necessary experience to perform these duties or the director shall not delegate. That kind of reads in opposite of the director shall delegate if the person has the necessary experience to perform these duties. I tend to agree with you. The inspector is not an inspector is not an inspector. There is just levels of expertise when dealing with, with massive projects that are different than stick built homes and premade manufactured homes going on a cement slab or footings. But that's why we have that -- I think we agreed on that language there that the inspector would make sure that he has the requisite

experience necessary. So I'm hoping that's a strong enough string. Is it your feeling that that's not a strong enough string that the director would review?

REP. CALLAHAN: I think the safety nets are there. I think that any prudent diligent municipality would, would hopefully rise to the occasion and say, we're not comfortable. We need to bring in outside -- I'm from St. Clair Shores. We have frequently retained an architectural engineering firm because there are many things that are just moving much faster than what our local people can keep up on, and, and that's the reason for the Grabowski letter. Even that fell through the cracks. There was a 20 foot mistake at this end of the project except they started from the mile road setback right away and they kept moving back to it to the point where the bleachers overhang this man's backyard. Who is liable? And, and the city is, is trying to wash their hands of it. And they would have been the first to say, we're not -- we don't have enough on-staff people. There's a cost involved. All through the bill -- and I don't want to get Rep Mans paranoid here, but I just want to know if there is a cost, where is that cost and is the permitting fees allowed? And, and from a taxpayer's standpoint, that's a left pocket right pocket sort of an issue. If, if the cost of the project goes up, I want to make sure that the out source resource is available because

I'm convinced that there is not a lot of -- been in the construction business for 22 years. I deal with building inspectors and they are probably good people but they, they are not up to date. And, and a letter from your municipality saying John is now on staff and please include him, boom, he is a building inspector. And if he gets into the field out over his head, there's a possibility that that could fall through the cracks. That may not be determined on the, at the field level.

REP. CHERRY: Thank you. Thank you.

STATE OF MICHIGAN)
)SS
COUNTY OF EATON)

I, Paul G. Brandell, Certified Shorthand Reporter and Notary Public in and for the County of Eaton, acting in the County of Ingham, State of Michigan, do hereby certify that the foregoing taped excerpt of the Hearing before the Labor and Occupational Committee of Michigan was taken by me.

I further certify that the taped statements then given were reported by me, to the best of my ability to hear and understand the recording, stenographically; subsequently with computer-aided transcription, produced under my direction and supervision; and that the foregoing is a full, true, and correct transcript of my original shorthand notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 13th day of November, 1998.

Paul G. Brandell, CSR-4552
Certified Shorthand Reporter,
Registered Professional Reporter, and
Notary Public, County of Eaton,
State of Michigan.

My Commission Expires: 3-26-02

EXHIBIT C

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 805 (as introduced 10-13-99)
Sponsor: Senator Mike Rogers
Committee: Human Resources, Labor, Senior Citizens and Veterans Affairs

Date Completed: 10-21-99

CONTENT

The bill would amend Public Act 306 of 1937, which regulates the construction, reconstruction, and remodeling of school buildings, to provide that the executive director of the Bureau of Construction Codes within the Department of Consumer and Industry Services would be responsible for the administration and enforcement of the Act and the State Construction Code Act in each school building in Michigan. The bill would delete the current requirement that the Superintendent of Public Instruction approve plans and specifications for school building construction.

The Bureau would have to perform for school buildings all plan reviews and inspections required by the State Construction Code and be the enforcing agency for the Act. A school building could not be constructed, remodeled, or reconstructed in Michigan after the bill's effective date until the Bureau gave written approval of the plans and specifications, indicating that the school building would be designed and constructed in conformance with the Code. This requirement would not apply to any school building for which construction had begun before the bill's effective date.

The director of the Bureau would have to delegate responsibility for the administration and enforcement of the Act, however, to an applicable agency, if both the school board and the governing body of the local unit of government had annually certified to the Construction Code Commission, in a manner prescribed by the Commission, that full-time Code officials, inspectors, and plan reviewers registered under the Building Officials and Inspectors Registration Act would conduct plan reviews and inspections of school buildings.

Public Act 306 specifies that a public or private school building, or any additions to it, may not be erected, remodeled, or reconstructed except in conformity with certain conditions. The first condition is that all plans and specifications for buildings must be prepared by, and the construction supervised by, a Michigan-registered architect or engineer. The bill would delete from that condition a requirement that, before construction, reconstruction or remodeling, written approval of the plans and specifications be obtained from the Superintendent of Public Instruction or the Superintendent's authorized agent. Under the provision to be deleted, the Superintendent may not issue his or her approval until securing, in writing, the approval of the State Fire Marshal or the appropriate municipal official, when certification is made relative to factors concerning fire safety, and the approval of the health department having jurisdiction relative to factors affecting water supply, sanitation, and food handling.

The Act requires that the Superintendent of Public Instruction publish an informative bulletin that sets forth good school building planning procedures and interprets the Act clearly. The bulletin must be prepared in cooperation with the State Fire Marshal and the State Health Commissioner and must be consistent with recognized good practice as evidenced by standards adopted by nationally recognized authorities in the fields of fire protection and health. The bill would delete these requirements.
Another condition that must be met under the Act is that every room enclosing a heating unit be enclosed by walls of fire-resisting materials and equipped with automatically closing fire doors. Heating units may not be located directly beneath any portion of a school building or addition constructed or reconstructed after the Act's effective date. Under the bill, this prohibition would apply to a building or addition constructed or reconstructed after the bill's effective date.

In addition, that Act provides that these heating-unit regulations may not be construed to require the removal of an existing heating plant from beneath an existing building when an addition to the building is constructed,

EXHIBIT D

HOUSE BILL No. 5187

October 11, 2001, Introduced by Reps. Pappageorge, Ehardt, Julian, Raczkowski, DeWeese and Bishop and referred to the Committee on Land Use and Environment.

A bill to amend 1976 PA 451, entitled

"The revised school code,"

by amending section 1263 (MCL 380.1263), as amended by 1990 PA 159.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1263. (1) The board of a school district shall not build a school upon a site without having prior title in fee to the site, a lease for not less than 99 years, or a lease for not less than 50 years from the United States government, or this state, or a political subdivision of this state.

(2) The board of a school district shall not build a frame school on a site for which it does not have a title in fee or a lease for 50 years without securing the privilege of removing the school.

HOUSE BILL No. 5187

(3) The board of a school district OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY shall not design or build a school building to be used for instructional or noninstructional school purposes or design and implement the design for a school site unless the design or construction is in compliance with ~~Act No. 306 of the Public Acts of 1937, being sections 388.851 to 388.855a of the Michigan Compiled Laws~~ 1937 PA 306, MCL 388.851 TO 388.855A. ~~The superintendent of public instruction has sole and exclusive jurisdiction over the review and approval of plans and specifications for the construction, reconstruction, or remodeling of school buildings used for instructional or noninstructional school purposes and of site plans for those school buildings.~~ BEGINNING WITH PUBLIC SCHOOLS BUILT OR OCCUPIED AFTER THE EFFECTIVE DATE OF THE 2001 AMENDATORY ACT THAT AMENDED THIS SUBSECTION, ALL OF THE FOLLOWING APPLY TO THE CONSTRUCTION OR LOCATION OF A PUBLIC SCHOOL:

(A) ALL LOCAL ZONING LAWS GENERALLY APPLICABLE IN THE JURISDICTION WHERE THE PUBLIC SCHOOL WILL BE LOCATED APPLY TO THE LOCATION AND SITING OF THE PUBLIC SCHOOL, AND THE BOARD OF THE SCHOOL DISTRICT, LOCAL ACT SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT, OR BOARD OF DIRECTORS OF THE PUBLIC SCHOOL ACADEMY, THAT WILL OPERATE THE SCHOOL SHALL ENSURE THAT THE LOCATION AND SITING OF THE PUBLIC SCHOOL COMPLY WITH THOSE LOCAL ZONING LAWS.

(B) AT LEAST 30 DAYS BEFORE COMMENCING CONSTRUCTION OF THE PUBLIC SCHOOL, OR BEFORE OCCUPYING AN EXISTING BUILDING FOR PUBLIC SCHOOL PURPOSES, THE BOARD OF THE SCHOOL DISTRICT, LOCAL

ACT SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT, OR BOARD OF DIRECTORS OF THE PUBLIC SCHOOL ACADEMY, THAT WILL OPERATE THE SCHOOL SHALL NOTIFY ALL RESIDENTS RESIDING WITHIN 1,500 FEET OF THE SITE OF THE INTENT TO CONSTRUCT OR OCCUPY THE BUILDING FOR PUBLIC SCHOOL PURPOSES. THE NOTIFICATION SHALL INCLUDE A COPY OF THE SITE PLAN.

House
Legislative
Analysis
Section

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

PUBLIC SCHOOLS SUBJECT TO LOCAL ZONING

House Bill 5187
Sponsor: Rep. John Pappageorge
Committee: Land Use and Environment

Complete to 2-21-01

A SUMMARY OF HOUSE BILL 5187 AS INTRODUCED 10-11-01

The bill would amend the Revised School Code to specify that beginning with public schools built or occupied after the effective date of the bill, the construction or location of a public school would be subject to all local zoning laws generally applicable in the jurisdiction where the public school would be located. The board of the local or intermediate school district or the board of directors of a public school academy (charter school) that was to operate the school would have to ensure that the location and siting of the public school complied with local zoning laws.

The bill would also require that at least 30 days before beginning construction of a public school, or before occupying an existing building for public school purposes, the board of the district or public school academy would have to notify all residents within 1,500 feet of the site of the intent to construct a building or occupy the building for school purposes. The notification would have to include a copy of the site plan.

The bill would delete the current provision in the Revised School Code that states:

The superintendent of public instruction has sole and exclusive jurisdiction over the review and approval of plans and specifications for the construction, reconstruction, or remodeling of school buildings used for instructional or noninstructional school purposes and of site plans for those buildings.

The act currently requires the board of a school district to comply with Public Act 306 of 1937, which deals with the construction of school buildings. The bill would impose the same requirement on the board of directors of a public school academy.

MCL 380.1263

Analyst: C. Couch

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

Michigan Legislature

Michigan Compiled Laws Complete Through PA 600 of 2002

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House Bill 5187 (2001)

Sponsors John Pappageorge - (primary)
Stephen Ehardt , Larry Julian , Andrew Raczkowski , Paul DeWeese , Michael Bishop

Categories Education, building use ; Education, public school academies ; Education, school districts ; Cities, ordinances ; Counties, ordinances ; Townships, ordinances ; Villages, ordinances

Education; building use; requirement for all public schools to adhere to local zoning ordinances; provide for. Amends sec. 1263 of 1976 PA 451 (MCL 380.1263).

House Introduced Bill Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.	PDF TXT
As Passed by the House As Passed by the House is the bill, as introduced, that includes any adopted House amendments, delineated within square brackets, and/or substitute before transmittal to the Senate.	PDF TXT
As Passed by the Senate As Passed by the Senate is the bill, as received from the House, that includes any adopted Senate amendments, delineated with angle brackets (shading prior to 2003), and/or substitute before transmittal to the House.	PDF TXT
House Enrolled Bill Enrolled bill is the version passed in identical form by both houses of the Legislature	PDF TXT

House Legislative Analysis

Summary (2-21-02) This document analyzes: HB5187	PDF TXT

House Fiscal Analysis

Committee Analysis 02/22/2002 This document analyzes: HB5187	PDF TXT

History

Date	Journal	Action

10/11/2001	HJ 069 Pg. 2056	referred to Committee on Land Use and Environment